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Dear Applicant:

We have considered your application for recognition of exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code.

The information submitted indicates that you were incorporated under the laws of the state of [REDACTED] on [REDACTED]. Your purposes as set forth in your articles of incorporation are as follows:

"...to own, operate and maintain common and green areas and common amenities within the subdivision known as [REDACTED] ...for the pleasure and benefit of the members of the Association."

Your bylaws, in Article Two, provide "Each individual lot within the subdivision shall be entitled to one membership in the corporation." Article Eight of your bylaws provides that the board of directors may make assessments on each lot for the purposes set forth in the Articles of Incorporation. Such assessment will be deemed to be a continuing purchase money obligation. Such covenant shall be deemed to run with the land. Article Nine sets forth the maintenance and services provided by the corporation. These include the following: 1) maintenance of exterior landscape, parks and recreational facilities; and 2) maintenance of the exterior of each dwelling, including roofs, gutters and exterior surfaces. Article Ten sets forth committees. The board of directors will appoint an architectural committee, which will approve all drawings, designs, specifications and architectural plans of structures to be erected in the subdivision. This committee has the power to waive deed restrictions; withhold approval; enforce deed restrictions; and remove offending structures.

Section 501(c)(3) of the Code provides, in part, for the exemption of organizations organized and operated for charitable and educational purposes.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to be exempt as an organization described in section 501(c)(3), an organization must be both organized and operated exclusively for one or more of the enumerated purposes.

[REDACTED]

If the organization fails to meet either the organizational test or the operational test, it is not exempt.

Section 1.501(c)(3)-1(b)(1)(i) of the regulations provides that an organization is organized exclusively for one or more exempt purposes only if its articles of organization (referred to in this section as its "articles") as defined in subparagraph (2) of this paragraph:

- (a) Limit the purposes of such organization to one or more exempt purposes; and
- (b) Do not expressly empower the organization to engage, otherwise than as an insubstantial part of its activities, in activities which in themselves are not in furtherance of one or more exempt purposes.

Section 1.501(c)(3)-1(b)(4) of the regulations provides, in part, that an organization is not organized exclusively for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose, for example, if, upon dissolution, such assets would, by reason of a provision in the organization's articles or by operation of law, be distributed for one or more exempt purposes, or to the Federal government, or to a State or local government, for a public purpose, or would be distributed by a court to another organization to be used in such manner as in the judgment of the court will best accomplish the general purposes for which the dissolved organization was organized.

Section 1.501(c)(3)-1(c)(1) of the regulations provides "an organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose."

Section 1.501(c)(3)-1(d)(1)(ii) of the regulations provides that an organization is not organized or operated exclusively for exempt purposes unless it serves a public rather than a private interest.

The Supreme Court, in Better Business Of Washington, D.C., Inc. v. United States, 326 U.S. 279 (1945), held that a better business bureau was not exclusively educational or charitable. Its activities were in part aimed at promoting the prosperity and standing of the business community, even though there was also benefit to the public. The Court held that in order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single non-educational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes.

[REDACTED]

Your organization's Articles of Incorporation do not include the language required under section 1.501(c)(3)-1(b) of the Income Tax Regulations. Your assets are not dedicated to enumerated purposes; and your purposes and powers are not purposes within the ambit of section 501(c)(3) of the Code or section 1.501(c)(3)-1(b)(1)(i) of the Income Tax Regulations.

When an organization's source or income is principally from membership dues and is used for the payment of benefits for members, it is essentially a mutual self interest type of organization. Your income is used to provide for direct benefits like yard work, utilities and insurance to the members. Any benefits to the larger community is minor and incidental. Your organization, like the organization described in the Better Business Bureau case, is not operated exclusively for charitable or educational purposes. Providing exterior maintenance of member's houses and the maintenance of architectural control of such exterior maintenance of your members homes is not an exclusively charitable or educational purpose, within the meaning of section 501(c)(3) of the Code.

Based upon the foregoing, we conclude that you are not operated exclusively for exempt purposes within the meaning of section 501(c)(3) of the Code. Therefore, you do not qualify for recognition of exemption under section 501(c)(3) of the Code. You are, therefore, required to file Federal income tax returns.

If you agree with these conclusions or do not wish to file a written protest, please sign and return Form 6018 in the enclosed self-addressed envelope as soon as possible.

If you do not agree with these conclusions, you may within 30 days from the date of this letter, file in duplicate a brief of the facts, law, and argument that clearly sets forth your position. If you desire an oral discussion of the issue, please indicate this in your protest.

If you do not file a protest with this office within 30 days of the date of this report or letter, this proposed determination will become final.

If you have further questions, please contact the person whose name and telephone number are shown at the beginning of this letter.

Sincerely,

[REDACTED]
District Director

Enclosures:
Publication 892
Form 6018